

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6474

Chapter 36, Laws of 1998

55th Legislature
1998 Regular Session

FERTILIZER REGULATION

EFFECTIVE DATE: 6/11/98

Passed by the Senate March 9, 1998
YEAS 35 NAYS 11

BRAD OWEN
President of the Senate

Passed by the House March 4, 1998
YEAS 73 NAYS 24

CLYDE BALLARD
**Speaker of the
House of Representatives**

Approved March 18, 1998

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Mike O'Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6474** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL
Secretary

FILED

March 18, 1998 - 10:45 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6474

AS AMENDED BY THE HOUSE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Senate Committee on Agriculture & Environment (originally sponsored by Senators Jacobsen, Rasmussen, Kline, T. Sheldon, Patterson and Fairley; by request of Governor Locke)

Read first time 02/06/98.

1 AN ACT Relating to fertilizer regulation; amending RCW
2 15.54.270, 15.54.275, 15.54.325, 15.54.330, 15.54.340, 15.54.380,
3 15.54.414, 15.54.420, 15.54.436, 15.54.470, 15.54.474, 15.54.480,
4 15.54.800, 70.95.030, 70.95.240, and 43.21B.110; adding new
5 sections to chapter 15.54 RCW; adding a new section to chapter
6 70.95 RCW; creating new sections; repealing RCW 15.54.335 and
7 70.95.830; and prescribing penalties.

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10

11 NEW SECTION. **Sec. 1.** (1) The legislature intends to
12 strengthen the state's fertilizer adulteration laws to protect
13 human health and the environment by:

14 (a) Ensuring that all fertilizers meet standards for allowable
15 metals;

16 (b) Allowing fertilizer purchasers and users to know about the
17 contents of fertilizer products; and

18 (c) Clarifying the department of ecology's oversight authority
19 over waste-derived fertilizers.

20 (2) The legislature intends to provide better information to
21 the public on fertilizers, soils, and potential health effects by

1 authorizing additional studies on plant uptake of metals and
2 levels of dioxins in soils and products.

3

4 **Sec. 2.** RCW 15.54.270 and 1997 c 427 s 1 are each amended to
5 read as follows:

6 Terms used in this chapter have the meaning given to them in
7 this chapter unless the context clearly indicates otherwise.

8 (1) "Brand" means a term, design, or trademark used in
9 connection with the distribution and sale of one or more grades of
10 commercial fertilizers.

11 (2) "Bulk fertilizer" means commercial fertilizer distributed
12 in a (~~((nonpackage))~~) nonpackaged form such as, but not limited to,
13 tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and
14 railcars.

15 (3) "Calcium carbonate equivalent" means the acid-neutralizing
16 capacity of an agricultural liming material expressed as a weight
17 percentage of calcium carbonate.

18 (4) "Commercial fertilizer" means a substance containing one
19 or more recognized plant nutrients and that is used for its plant
20 nutrient content or that is designated for use or claimed to have
21 value in promoting plant growth, and shall include limes, gypsum,
22 and manipulated animal and vegetable manures(~~((, and a material~~
23 ~~approved under RCW 70.95.830))~~). It does not include unmanipulated
24 animal and vegetable manures, organic waste-derived material, and
25 other products exempted by the department by rule.

26 (5) "Composting" means the controlled aerobic degradation of
27 organic waste materials. Natural decay of organic waste under
28 uncontrolled conditions is not composting.

29 (6) "Customer-formula fertilizer" means a mixture of
30 commercial fertilizer or materials of which each batch is mixed
31 according to the specifications of the final purchaser.

32 (~~((+6+))~~) (7) "Department" means the department of agriculture
33 of the state of Washington or its duly authorized representative.

34 (~~((+7+))~~) (8) "Director" means the director of the department of
35 agriculture.

36 (~~((+8+))~~) (9) "Distribute" means to import, consign,
37 manufacture, produce, compound, mix, or blend commercial
38 fertilizer, or to offer for sale, sell, barter, exchange, or
39 otherwise supply commercial fertilizer in this state.

1 (~~((9))~~) (10) "Distributor" means a person who distributes.

2 (~~((10))~~) (11) "Fertilizer material" means a commercial

3 fertilizer that either:

4 (a) Contains important quantities of no more than one of the

5 primary plant nutrients: Nitrogen, phosphate, and potash;

6 (b) Has eighty-five percent or more of its plant nutrient

7 content present in the form of a single chemical compound; or

8 (c) Is derived from a plant or animal residue or byproduct or

9 natural material deposit that has been processed in such a way

10 that its content of plant nutrients has not been materially

11 changed except by purification and concentration.

12 (12) "Grade" means the percentage of total nitrogen, available

13 phosphoric acid, and soluble potash stated in whole numbers in the

14 same terms, order, and percentages as in the "guaranteed

15 analysis," unless otherwise allowed by a rule adopted by the

16 department. Specialty fertilizers may be guaranteed in fractional

17 units of less than one percent of total nitrogen, available

18 phosphorus or phosphoric acid, and soluble potassium or potash.

19 Fertilizer materials, bone meal, manures, and similar materials

20 may be guaranteed in fractional units.

21 (~~((11))~~) (13) "Guaranteed analysis."

22 (a) Until the director prescribes an alternative form of

23 "guaranteed analysis" by rule the term "guaranteed analysis" shall

24 mean the minimum percentage of plant nutrients claimed in the

25 following order and form:

26

27 Total nitrogen (N)

28 percent

29 Available phosphoric acid (P2O5)

30 percent

31 Soluble potash (K2O)

32 percent

33

34 The percentage shall be stated in whole numbers unless

35 otherwise allowed by the department by rule.

36 The "guaranteed analysis" may also include elemental

37 guarantees for phosphorus (P) and potassium (K).

38 (b) For unacidulated mineral phosphatic material and basic

39 slag, bone, tankage, and other organic phosphatic materials, the

40 total phosphoric acid or degree of fineness may also be

1 guaranteed.

2 (c) Guarantees for plant nutrients other than nitrogen,
3 phosphorus, and potassium shall be as allowed or required by rule
4 of the department. The guarantees for such other nutrients shall
5 be expressed in the form of the element.

6 (d) The guaranteed analysis for limes shall include the
7 percentage of calcium or magnesium expressed as their carbonate;
8 the calcium carbonate equivalent as determined by methods
9 prescribed by the association of official analytical chemists; and
10 the minimum percentage of material that will pass respectively a
11 one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size
12 declaration may also include the percentage of material that will
13 pass additional mesh sizes.

14 (e) In commercial fertilizer, the principal constituent of
15 which is calcium sulfate (gypsum), the percentage of calcium
16 sulfate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$) shall be given along with the percentage of
17 total sulfur.

18 ~~((f) The guaranteed analysis for a material approved under~~
19 ~~RCW 70.95.830 and to be used as a soil amendment shall include the~~
20 ~~name and percentage of each soil amending ingredient and the total~~
21 ~~percentage of all other ingredients.~~

22 ~~—((12))~~ (14) "Imported fertilizer" means any fertilizer
23 distributed into Washington from any other state, province, or
24 country.

25 (15) "Label" means the display of all written, printed, or
26 graphic matter, upon the immediate container, or a statement
27 accompanying a fertilizer.

28 ~~((13))~~ (16) "Labeling" includes all written, printed, or
29 graphic matter, upon or accompanying a commercial fertilizer, or
30 advertisement, brochures, posters, television, and radio
31 announcements used in promoting the sale of such fertilizer.

32 ~~((14))~~ (17) "Licensee" means the person who receives a
33 license to distribute a commercial fertilizer under the provisions
34 of this chapter.

35 ~~((15))~~ (18) "Lime" means a substance or a mixture of
36 substances, the principal constituent of which is calcium or
37 magnesium carbonate, hydroxide, or oxide, singly or combined.

38 ~~((16))~~ (19) "Manipulation" means processed or treated in any
39 manner, including drying to a moisture content less than thirty

1 percent.

2 (~~(+17+)~~) (20) "Manufacture" means to compound, produce,
3 granulate, mix, blend, repackage, or otherwise alter the
4 composition of fertilizer materials.

5 (~~(+18+)~~) (21) "Micronutrients" are: Boron; chlorine; cobalt;
6 copper; iron; manganese; molybdenum; sodium; and zinc.

7 (22) "Micronutrient fertilizer" means a produced or imported
8 commercial fertilizer that contains commercially valuable
9 concentrations of micronutrients but does not contain commercially
10 valuable concentrations of nitrogen, phosphoric acid, available
11 phosphorus, potash, calcium, magnesium, or sulfur.

12 (23) "Official sample" means a sample of commercial fertilizer
13 taken by the department and designated as "official" by the
14 department.

15 (~~(+19+)~~) (24) "Organic waste-derived material" means grass
16 clippings, leaves, weeds, bark, plantings, prunings, and other
17 vegetative wastes, uncontaminated wood waste from logging and
18 milling operations, food wastes, food processing wastes, and
19 materials derived from these wastes through composting. "Organic
20 waste-derived material" does not include products that include
21 biosolids.

22 (25) "Packaged fertilizer" means commercial fertilizers,
23 either agricultural or specialty, distributed in nonbulk form.

24 (~~(+20+)~~) (26) "Person" means an individual, firm, brokerage,
25 partnership, corporation, company, society, or association.

26 (~~(+21+)~~) (27) "Percent" or "percentage" means the percentage
27 by weight.

28 (~~(+22+)~~) (28) "Produce" means to compound or fabricate a
29 commercial fertilizer through a physical or chemical process, or
30 through mining. "Produce" does not include mixing, blending, or
31 repackaging commercial fertilizer products.

32 (29) "Registrant" means the person who registers commercial
33 fertilizer under the provisions of this chapter.

34 (~~(+23+)~~) (30) "Specialty fertilizer" means a commercial
35 fertilizer distributed primarily for nonfarm use, such as, but not
36 limited to, use on home gardens, lawns, shrubbery, flowers, golf
37 courses, municipal parks, cemeteries, greenhouses, and nurseries.

38 (~~(+24+)~~) (31) "Ton" means the net weight of two thousand
39 pounds avoirdupois.

1 (~~((+25+))~~) (32) "Total nutrients" means the sum of the
2 percentages of total nitrogen, available phosphoric acid, and
3 soluble potash as guaranteed and as determined by analysis.

4 (33) "Washington application rate" is calculated by using an
5 averaging period of up to four consecutive years that incorporates
6 agronomic rates that are representative of soil, crop rotation,
7 and climatic conditions in Washington state.

8 (34) "Waste-derived fertilizer" means a commercial fertilizer
9 that is derived in whole or in part from solid waste as defined in
10 chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does
11 not include fertilizers derived from biosolids or biosolids
12 products regulated under chapter 70.95J RCW or wastewaters
13 regulated under chapter 90.48 RCW.

14
15 **Sec. 3.** RCW 15.54.275 and 1993 c 183 s 2 are each amended to
16 read as follows:

17 (1) No person may distribute a (~~((commercial))~~) bulk fertilizer
18 in this state(~~((, except packaged fertilizers,))~~) until a license to
19 distribute has been obtained by that person. An annual license is
20 required for each out-of-state or in-state location that
21 distributes (~~((nonpackaged—commercial))~~) bulk fertilizer in
22 Washington state. An application for each location shall be filed
23 on forms provided by the master license system and shall be
24 accompanied by an annual fee of twenty-five dollars per location.
25 The license shall expire on the master license expiration date.

26 (2) An application for license shall include the following:

27 (a) The name and address of licensee.

28 (b) Any other information required by the department by rule.

29 (3) The name and address shown on the license shall be shown
30 on all labels, pertinent invoices, and storage facilities for
31 fertilizer distributed by the licensee in this state.

32 (4) If an application for license renewal provided for in this
33 section is not filed prior to (~~((the))~~) the master license
34 expiration date, a delinquency fee of twenty-five dollars shall be
35 assessed and added to the original fee and shall be paid by the
36 applicant before the renewal license shall be issued. The
37 assessment of this delinquency fee shall not prevent the
38 department from taking any other action as provided for in this
39 chapter. The penalty shall not apply if the applicant furnishes

1 an affidavit that he or she has not distributed this commercial
2 fertilizer subsequent to the expiration of his or her prior
3 license.

4

5 **Sec. 4.** RCW 15.54.325 and 1993 c 183 s 3 are each amended to
6 read as follows:

7 (1) No person may distribute in this state a ~~((packaged))~~
8 commercial fertilizer until it ~~((is))~~ has been registered with the
9 department by the ~~((distributor whose name appears on the label))~~
10 producer, importer, or packager of that product. A bulk
11 fertilizer does not require registration if all commercial
12 fertilizer products contained in the final product are registered.

13 ~~(2)~~ An application for ~~((each packaged fertilizer product))~~
14 registration shall be made on a form furnished by the department
15 and shall be accompanied by ~~((an initial))~~ a fee of twenty-five
16 dollars for ~~((the first))~~ each product ~~((and ten dollars for each~~
17 ~~additional product))~~. Labels for each product shall accompany the
18 application. All companies planning to mix ~~((packaged))~~ customer-
19 formula fertilizers shall include the statement "customer-formula
20 grade mixes" under the column headed "product name" on the product
21 registration application form. All customer-formula fertilizers
22 sold under one brand name shall be considered one product. ~~((Upon~~
23 ~~the approval of an application by the department, a copy of the~~
24 ~~registration shall be furnished to the applicant. All~~
25 ~~registrations expire on June 30th of each year except that for the~~
26 ~~period beginning January 1, 1994, the registration shall expire on~~
27 ~~June 30, 1995.~~

28 ~~---(2)---)~~ (3) An application for registration shall include the
29 following:

30 (a) The product name;
31 (b) The brand and grade;
32 (c) The guaranteed analysis;
33 (d) Name ~~((and))~~, address, and phone number of the registrant;
34 (e) Labels for each product being registered;
35 (f) Identification of those products that are (i) waste-
36 derived fertilizers, (ii) micronutrient fertilizers, or (iii)
37 fertilizer materials containing phosphate;

38 (g) Identification of the fertilizer components in the
39 commercial fertilizer product and verification that all the

1 components are registered. If any of the components are not
2 registered, then the application must include the concentration of
3 each metal in each fertilizer component, for which standards are
4 established under RCW 15.54.800;

5 (h) Waste-derived fertilizers and micronutrient fertilizers
6 shall include at a minimum, information to ensure the product
7 complies with chapter 70.105 RCW and the resource conservation and
8 recovery act, 42 U.S.C. Sec. 6901 et seq.; and

9 (i) Any other information required by the department by rule.

10 ~~((+3+))~~ (4) If an application for renewal of the product
11 registration provided for in this section is not filed prior to
12 July 1st of any one year, a penalty of ten dollars per product
13 shall be assessed and added to the original fee and shall be paid
14 by the applicant before the renewal registration shall be issued.
15 The assessment of this late collection fee shall not prevent the
16 department from taking any other action as provided for in this
17 chapter. The penalty shall not apply if the applicant furnishes
18 an affidavit that he or she has not distributed this commercial
19 fertilizer subsequent to the expiration of his or her prior
20 registration.

21
22 **Sec. 5.** RCW 15.54.330 and 1993 c 183 s 4 are each amended to
23 read as follows:

24 (1) The department shall examine the ~~((packaged))~~ commercial
25 fertilizer product registration application form and labels for
26 conformance with the requirements of this chapter. If the
27 application and appropriate labels are in proper form and contain
28 the required information, the particular ~~((packaged))~~ commercial
29 fertilizer products shall be registered by the department and a
30 certificate of registration shall be issued to the applicant. All
31 registrations expire June 30th of each year.

32 (2) In reviewing the ~~((packaged))~~ commercial fertilizer
33 product registration application, the department may consider
34 experimental data, manufacturers' evaluations, data from
35 agricultural experiment stations, product review evaluations, or
36 other authoritative sources to substantiate labeling claims. The
37 data shall be from statistically designed and analyzed trials
38 representative of the soil, crops, and climatic conditions found
39 in the northwestern area of the United States.

1 (3) In determining whether approval of a labeling statement or
2 guarantee of an ingredient is appropriate, the department may
3 require the submission of a written statement describing the
4 methodology of laboratory analysis utilized, the source of the
5 ingredient material, and any reference material relied upon to
6 support the label statement or guarantee of ingredient.

7 (4) Before registering a waste-derived fertilizer or
8 micronutrient fertilizer, the department shall obtain written
9 approval from the department of ecology as provided in RCW
10 15.54.800. Once a waste-derived fertilizer or micronutrient
11 fertilizer has been approved by the department of ecology, its
12 subsequent use in another product during that registration cycle
13 shall not require department of ecology review. This subsection
14 shall apply to new and renewal registration applications for
15 periods beginning July 1, 1999, and thereafter.

16
17 **Sec. 6.** RCW 15.54.340 and 1993 c 183 s 5 are each amended to
18 read as follows:

19 (1) Any ((~~packaged~~)) commercial fertilizer distributed in this
20 state ((~~in containers~~)) shall have placed on or affixed to the
21 package a label setting forth in clearly legible and conspicuous
22 form the following information:

23 (a) The net weight;

24 (b) The product name, brand, and grade. The grade is not
25 required if no primary nutrients are claimed;

26 (c) The guaranteed analysis;

27 (d) The name and address of the registrant or licensee. The
28 name and address of the manufacturer, if different from the
29 registrant or licensee, may also be stated; ((and))

30 (e) Any information required under WAC 296-62-054;

31 (f) At a minimum the following labeling statement: "This
32 product has been registered with the Washington State Department
33 of Agriculture. When applied as directed, this fertilizer meets
34 the Washington standards for arsenic, cadmium, cobalt, mercury,
35 molybdenum, lead, nickel, selenium, and zinc. You have the right
36 to receive specific information about Washington standards from
37 the distributor of this product."

38 (g) After July 1, 1999, the label must also state:
39 "Information received by the Washington State Department of

1 Agriculture regarding the components in this product is available
2 on the internet at <http://www.wa.gov/agr/>."; and

3 (h) Other information as required by the department by rule.

4 (2) If a commercial fertilizer is distributed in bulk, a
5 written or printed statement of the information required by
6 subsection (1) (~~(above)~~) of this section shall accompany delivery
7 and be supplied to the purchaser at the time of delivery.

8 (3) Each delivery of a customer-formula fertilizer shall be
9 subject to containing those ingredients specified by the
10 purchaser, which ingredients shall be shown on the statement or
11 invoice with the amount contained therein, and a record of all
12 invoices of customer-formula grade mixes shall be kept by the
13 registrant or licensee for a period of twelve months and shall be
14 available to the department upon request: PROVIDED, That each
15 such delivery shall be accompanied by either a statement, invoice,
16 a delivery slip, or a label if bagged, containing the following
17 information: The net weight; the brand; the guaranteed analysis
18 which may be stated to the nearest tenth of a percent or to the
19 next lower whole number; the name and address of the registrant or
20 licensee, or manufacturer, or both; and the name and address of
21 the purchaser.

22 (4) Any person who distributes a commercial fertilizer in this
23 state shall make available to the purchaser on request, a copy of
24 standards for metals established in RCW 15.54.800.

25
26 **Sec. 7.** RCW 15.54.380 and 1993 c 183 s 9 are each amended to
27 read as follows:

28 (1) If the analysis shall show that any commercial fertilizer
29 falls short of the guaranteed analysis in any one plant nutrient
30 or in total nutrients, penalty shall be assessed in favor of the
31 department in accordance with the following provisions:

32 (a) A penalty of three times the commercial value of the
33 deficiency, if such deficiency in any one plant nutrient is more
34 than two percent under guarantee on any one commercial fertilizer
35 in which that plant nutrient is guaranteed up to and including ten
36 percent; a penalty of three times the commercial value of the
37 deficiency, if such deficiency in any one plant nutrient is more
38 than three percent under guarantee on any one commercial
39 fertilizer in which that plant nutrient is guaranteed from ten and

1 one-tenth percent to twenty percent; a penalty of three times the
2 commercial value of the deficiency, if such deficiency in any one
3 plant nutrient is more than four percent under guarantee on any
4 one commercial fertilizer in which that plant nutrient is
5 guaranteed twenty and one-tenth percent and above.

6 (b) A penalty of three times the commercial value of the total
7 nutrient deficiency shall be assessed when such deficiency is more
8 than two percent under the calculated total nutrient guarantee.

9 (c) When a commercial fertilizer is subject to penalty under
10 both (a) and (b) (~~((above))~~) of this subsection, only the larger
11 penalty shall be assessed.

12 (2) All penalties assessed under this section on any one
13 commercial fertilizer, represented by the sample analyzed, shall
14 be paid to the department within three months after the date of
15 notice from the department to the registrant or licensee. The
16 department shall deposit the amount of the penalty into (~~((the~~
17 ~~fertilizer, agricultural mineral and lime account))~~) an account
18 with the agricultural local fund.

19 (3) Nothing contained in this section shall prevent any person
20 from appealing to a court of competent jurisdiction for a judgment
21 as to the justification of such penalties imposed under
22 subsections (1) and (2) (~~((above))~~) of this section.

23 (4) The civil penalties payable in subsections (1) and (2)
24 (~~((above))~~) of this section shall in no manner be construed as
25 limiting the consumer's right to bring a civil action in damage
26 against the registrant or licensee paying said civil penalties.

27
28 **Sec. 8.** RCW 15.54.414 and 1993 c 183 s 10 are each amended to
29 read as follows:

30 No person may distribute an adulterated commercial fertilizer.
31 A commercial fertilizer is adulterated:

32 (1) If it contains any deleterious or harmful (~~((ingredient))~~)
33 substance in sufficient amount to render it injurious to
34 beneficial plant life when applied in accordance with directions
35 for use on the label, or if adequate warning statements or
36 directions for use which may be necessary to protect plant life
37 are not shown upon the label;

38 (2) If its composition falls below or differs from that which
39 it is purported to possess by its labeling; (~~((or))~~)

(3) If it contains unwanted viable seed; or

(4) If the concentration of any nonnutritive constituent in a representative sample of commercial fertilizer exceeds the maximum concentration stated on the registration application or on the label.

Sec. 9. RCW 15.54.420 and 1993 c 183 s 11 are each amended to read as follows:

It shall be unlawful for any person to:

(1) Distribute an adulterated or misbranded commercial fertilizer;

(2) Fail, refuse, or neglect to place upon or attach to each package of distributed commercial fertilizer a label containing all of the information required by this chapter;

(3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this chapter;

(4) Distribute a ~~((packaged))~~ commercial fertilizer product which has not been registered with the department;

(5) Distribute bulk fertilizer without holding a license to do so;

~~((Distribute unregistered packaged fertilizer. It is the responsibility of the person who manufactures or subsequently packages that fertilizer to register it prior to distribution in this state;~~

~~—(7))~~ Refuse or neglect to keep and maintain records, or to make reports when and as required; or

~~((+8))~~ (7) Make false or fraudulent applications, records, invoices, or reports.

Sec. 10. RCW 15.54.436 and 1993 c 183 s 12 are each amended to read as follows:

The department may cancel the license to distribute commercial fertilizer or registration of any ~~((packaged))~~ commercial fertilizer product or refuse to license a distributor or register any ~~((packaged))~~ commercial fertilizer product as provided in this chapter due to:

(1) An incomplete or insufficient license or registration application;

1 (2) The misbranding or adulteration of a commercial
2 fertilizer; or

3 (3) A violation of this chapter or rules adopted under this
4 chapter.

5 If the department cancels or refuses to renew an existing
6 license or registration due to the misbranding or adulteration of
7 a commercial fertilizer or due to a violation of this chapter or a
8 rule adopted hereunder, the licensee/registrant or applicant may
9 request a hearing as provided for in chapter 34.05 RCW.

10

11 **Sec. 11.** RCW 15.54.470 and 1993 c 183 s 13 are each amended
12 to read as follows:

13 (1) Any person who violates any provision of this chapter
14 shall be guilty of a misdemeanor, and the fines collected shall be
15 disposed of as provided under RCW 15.54.480.

16 (2) Nothing in this chapter shall be considered as requiring
17 the department to report for prosecution or to cancel the
18 registration of a ((~~packaged~~)) commercial fertilizer product or to
19 stop the sale of fertilizers for violations of this chapter, when
20 violations are of a minor character, and/or when the department
21 believes that the public interest will be served and protected by
22 a suitable notice of the violation in writing.

23 (3) It shall be the duty of each prosecuting attorney to whom
24 any violation of this chapter is reported, to cause appropriate
25 proceedings to be instituted and prosecuted in a court of
26 competent jurisdiction without delay. Before the department
27 reports a violation of this chapter for such prosecution, an
28 opportunity shall be given the distributor to present his or her
29 view in writing or orally to the department.

30 (4) The department is hereby authorized to apply for, and the
31 court authorized to grant, a temporary or permanent injunction
32 restraining any person from violating or continuing to violate any
33 of the provisions of this chapter or any rule adopted under this
34 chapter, notwithstanding the existence of any other remedy at law.
35 Any such injunction shall be issued without bond.

36

37 **Sec. 12.** RCW 15.54.474 and 1987 c 45 s 10 are each amended to
38 read as follows:

39 Every person who fails to comply with this chapter, or any

1 rule adopted under it, may be subjected to a civil penalty, as
2 determined by the director, in an amount of not more than ((one))
3 seven thousand five hundred dollars for every such violation.
4 Each and every such violation shall be a separate and distinct
5 offense. Every person, who, through an act of commission or
6 omission, procures, aids, or abets in the violation shall be
7 considered to have violated this chapter and may be subject to the
8 penalty provided for in this section.

9
10 **Sec. 13.** RCW 15.54.480 and 1988 c 254 s 3 are each amended to
11 read as follows:

12 (1) Except as provided in subsection (2) of this section, all
13 moneys collected under the provisions of this chapter shall be
14 paid to the director and deposited in an account within the
15 agricultural local fund. Such deposits shall be used only in the
16 administration and enforcement of this chapter. ((Any residual
17 balance remaining in the fertilizer, agricultural mineral and lime
18 fund on June 9, 1988, shall be transferred to that account within
19 the agricultural local fund.))

20 (2) Moneys collected under RCW 15.54.474 shall be deposited in
21 the general fund.

22
23 NEW SECTION. **Sec. 14.** The department of agriculture shall
24 conduct a comprehensive study of plant uptake of metals. The
25 department shall work cooperatively with the department of ecology
26 and the department of health to interpret the study results
27 regarding potential impacts to public and environmental health. A
28 report of the results of the study shall be submitted to
29 appropriate committees of the legislature by December 31, 2000.

30
31 **Sec. 15.** RCW 15.54.800 and 1997 c 427 s 3 are each amended to
32 read as follows:

33 (1) The director shall administer and enforce the provisions
34 of this chapter and any rules adopted under this chapter. All
35 authority and requirements provided for in chapter 34.05 RCW apply
36 to this chapter in the adoption of rules.

37 (2) The director may adopt appropriate rules for carrying out
38 the purpose and provisions of this chapter, including but not
39 limited to rules providing for:

1 (a) Definitions of terms;
2 (b) Determining standards for labeling and registration of
3 commercial fertilizers;
4 (c) The collection and examination of commercial fertilizers;
5 (d) Recordkeeping by registrants and licensees;
6 (e) Regulation of the use and disposal of commercial
7 fertilizers for the protection of ground water and surface water;
8 and
9 (f) The safe handling, transportation, storage, display, and
10 distribution of commercial fertilizers.

11 (3)(a) Standards are established for allowable levels of
12 nonnutritive substances in commercial fertilizers. These
13 standards are Canadian figures for agricultural and agri-food
14 Canadian maximum acceptable cumulative metal additions to soil
15 established under Trade Memorandum T-4-93 dated August 1996.
16 Washington application rates shall be used to ensure that the
17 maximum acceptable cumulative metal additions to soil are not
18 exceeded.

19 (b) If federal or other risk-based standards are adopted or
20 scientific peer-reviewed studies show that the standards adopted
21 in this section are not at the appropriate level to protect human
22 health or the environment, the department, in consultation with
23 the departments of ecology and health, may initiate a rule making
24 to amend these standards.

25
26 NEW SECTION. Sec. 16. A new section is added to chapter
27 15.54 RCW to read as follows:

28 (1) After receipt from the department of the completed
29 application required by RCW 15.54.325, the department of ecology
30 shall evaluate whether the use of the proposed waste-derived
31 fertilizer or the micronutrient fertilizer as defined in RCW
32 15.54.270 is consistent with the following:

33 (a) Chapter 70.95 RCW, the solid waste management act;
34 (b) Chapter 70.105 RCW, the hazardous waste management act;
35 and
36 (c) 42 U.S.C. Sec. 6901 et seq., the resource conservation and
37 recovery act.

38 (2) The department of ecology shall apply the standards
39 adopted in RCW 15.54.800. If more stringent standards apply under

1 chapter 173-303 WAC for the same constituents, the department of
2 ecology must use the more stringent standards.

3 (3) Within sixty days of receiving the completed application,
4 the department of ecology shall advise the department as to
5 whether the application complies with the requirements of
6 subsections (1) and (2) of this section. In making a
7 determination, the department of ecology shall consult with the
8 department of health and the department of labor and industries.

9 (4) A party aggrieved by a decision of the department of
10 ecology to issue a written approval under this section or to deny
11 the issuance of such an approval may appeal the decision to the
12 pollution control hearings board within thirty days of the
13 decision. Review of such a decision shall be conducted in
14 accordance with chapter 43.21B RCW. Any subsequent appeal of a
15 decision of the hearings board shall be obtained in accordance
16 with RCW 43.21B.180.

17
18 **Sec. 17.** RCW 70.95.030 and 1997 c 213 s 1 are each amended to
19 read as follows:

20 As used in this chapter, unless the context indicates
21 otherwise:

22 (1) "City" means every incorporated city and town.

23 (2) "Commission" means the utilities and transportation
24 commission.

25 (3) "Committee" means the state solid waste advisory
26 committee.

27 (4) "Composted material" means organic solid waste that has
28 been subjected to controlled aerobic degradation at a solid waste
29 facility in compliance with the requirements of this chapter.
30 Natural decay of organic solid waste under uncontrolled conditions
31 does not result in composted material.

32 (5) "Department" means the department of ecology.

33 ((+5+)) (6) "Director" means the director of the department of
34 ecology.

35 ((+6+)) (7) "Disposal site" means the location where any final
36 treatment, utilization, processing, or deposit of solid waste
37 occurs.

38 ((+7+)) (8) "Energy recovery" means a process operating under
39 federal and state environmental laws and regulations for

1 converting solid waste into usable energy and for reducing the
2 volume of solid waste.

3 ~~((+8+))~~ (9) "Functional standards" means criteria for solid
4 waste handling expressed in terms of expected performance or solid
5 waste handling functions.

6 ~~((+9+))~~ (10) "Incineration" means a process of reducing the
7 volume of solid waste operating under federal and state
8 environmental laws and regulations by use of an enclosed device
9 using controlled flame combustion.

10 ~~((+10+))~~ (11) "Jurisdictional health department" means city,
11 county, city-county, or district public health department.

12 ~~((+11+))~~ (12) "Landfill" means a disposal facility or part of
13 a facility at which solid waste is placed in or on land and which
14 is not a land treatment facility.

15 ~~((+12+))~~ (13) "Local government" means a city, town, or
16 county.

17 ~~((+13+))~~ (14) "Modify" means to substantially change the
18 design or operational plans including, but not limited to, removal
19 of a design element previously set forth in a permit application
20 or the addition of a disposal or processing activity that is not
21 approved in the permit.

22 ~~((+14+))~~ (15) "Multiple family residence" means any structure
23 housing two or more dwelling units.

24 ~~((+15+))~~ (16) "Person" means individual, firm, association,
25 copartnership, political subdivision, government agency,
26 municipality, industry, public or private corporation, or any
27 other entity whatsoever.

28 ~~((+16+))~~ (17) "Recyclable materials" means those solid wastes
29 that are separated for recycling or reuse, such as papers, metals,
30 and glass, that are identified as recyclable material pursuant to
31 a local comprehensive solid waste plan. Prior to the adoption of
32 the local comprehensive solid waste plan, adopted pursuant to RCW
33 70.95.110(2), local governments may identify recyclable materials
34 by ordinance from July 23, 1989.

35 ~~((+17+))~~ (18) "Recycling" means transforming or
36 remanufacturing waste materials into usable or marketable
37 materials for use other than landfill disposal or incineration.

38 ~~((+18+))~~ (19) "Residence" means the regular dwelling place of
39 an individual or individuals.

1 (~~((+19+))~~) (20) "Sewage sludge" means a semisolid substance
2 consisting of settled sewage solids combined with varying amounts
3 of water and dissolved materials, generated from a wastewater
4 treatment system, that does not meet the requirements of chapter
5 70.95J RCW.

6 (~~((+20+))~~) (21) "Soil amendment" means any substance that is
7 intended to improve the physical characteristics of the soil,
8 except composted material, commercial fertilizers, agricultural
9 liming agents, unmanipulated animal manures, unmanipulated
10 vegetable manures, food wastes, food processing wastes, and
11 materials exempted by rule of the department, such as biosolids as
12 defined in chapter 70.95J RCW and wastewater as regulated in
13 chapter 90.48 RCW.

14 (22) "Solid waste" or "wastes" means all putrescible and
15 nonputrescible solid and semisolid wastes including, but not
16 limited to, garbage, rubbish, ashes, industrial wastes, swill,
17 sewage sludge, demolition and construction wastes, abandoned
18 vehicles or parts thereof, and recyclable materials.

19 (~~((+21+))~~) (23) "Solid waste handling" means the management,
20 storage, collection, transportation, treatment, utilization,
21 processing, and final disposal of solid wastes, including the
22 recovery and recycling of materials from solid wastes, the
23 recovery of energy resources from solid wastes or the conversion
24 of the energy in solid wastes to more useful forms or combinations
25 thereof.

26 (~~((+22+))~~) (24) "Source separation" means the separation of
27 different kinds of solid waste at the place where the waste
28 originates.

29 (~~((+23+))~~) (25) "Vehicle" includes every device physically
30 capable of being moved upon a public or private highway, road,
31 street, or watercourse and in, upon, or by which any person or
32 property is or may be transported or drawn upon a public or
33 private highway, road, street, or watercourse, except devices
34 moved by human or animal power or used exclusively upon stationary
35 rails or tracks.

36 (~~((+24+))~~) (26) "Waste-derived soil amendment" means any soil
37 amendment as defined in this chapter that is derived from solid
38 waste as defined in RCW 70.95.030, but does not include biosolids
39 or biosolids products regulated under chapter 70.95J RCW or

1 wastewaters regulated under chapter 90.48 RCW.

2 (27) "Waste reduction" means reducing the amount or toxicity
3 of waste generated or reusing materials.

4
5 NEW SECTION. **Sec. 18.** A new section is added to chapter
6 70.95 RCW to read as follows:

7 (1) Waste-derived soil amendments that meet the standards and
8 criteria in this section may apply for exemption from solid waste
9 permitting as required under RCW 70.95.170. The application shall
10 be submitted to the department in a format determined by the
11 department or an equivalent format. The application shall
12 include:

13 (a) Analytical data showing that the waste-derived soil
14 amendments meet standards established under RCW 15.54.800; and

15 (b) Other information deemed appropriate by the department to
16 protect human health and the environment.

17 (2) After receipt of an application, the department shall
18 review it to determine whether the application is complete, and
19 forward a copy of the complete application to all interested
20 jurisdictional health departments for review and comment. Within
21 forty-five days, the jurisdictional health departments shall
22 forward their comments and any other information they deem
23 relevant to the department, which shall then give final approval
24 or disapproval of the application. Every complete application
25 shall be approved or disapproved by the department within ninety
26 days after receipt.

27 (3) The department, after providing opportunity for comments
28 from the jurisdictional health departments, may at any time revoke
29 an exemption granted under this section if the quality or use of
30 the waste-derived soil amendment changes or the management,
31 storage, or end use of the waste-derived soil amendment
32 constitutes a threat to human health or the environment.

33 (4) Any aggrieved party may appeal the determination by the
34 department in subsection (2) or (3) of this section to the
35 pollution control hearings board.

36
37 **Sec. 19.** RCW 70.95.240 and 1997 c 427 s 4 are each amended to
38 read as follows:

39 (1) After the adoption of regulations or ordinances by any

1 county, city, or jurisdictional board of health providing for the
2 issuance of permits as provided in RCW 70.95.160, it shall be
3 unlawful for any person to dump or deposit or permit the dumping
4 or depositing of any solid waste onto or under the surface of the
5 ground or into the waters of this state except at a solid waste
6 disposal site for which there is a valid permit. This section
7 (~~shall~~) does not:

8 (a) Prohibit a person from dumping or depositing solid waste
9 resulting from his or her own activities onto or under the surface
10 of ground owned or leased by him or her when such action does not
11 violate statutes or ordinances, or create a nuisance; (~~or~~)

12 (~~(b) ((Apply to a person using a material or materials on the
13 land as commercial fertilizer if (i) the department of ecology has
14 issued written approval for the use of the material or materials
15 as commercial fertilizer as provided in RCW 70.95.830, (ii) the
16 registration of the material or materials as a packaged commercial
17 fertilizer has not been canceled under RCW 15.54.335, and (iii)
18 the distribution of the material or materials as a commercial
19 fertilizer has not been prohibited by the department of
20 agriculture under RCW 15.54.335)) Apply to a person using a waste-
21 derived soil amendment that has been approved by the department
22 under section 18 of this act; or~~

23 (c) Apply to the application of commercial fertilizer that has
24 been registered with the department of agriculture as provided in
25 RCW 15.54.325, and that is applied in accordance with the
26 standards established in RCW 15.54.800(3).

27 (2)(a) It is a class 3 civil infraction as defined in RCW
28 7.80.120 for a person to litter in an amount less than or equal to
29 one cubic foot.

30 (b) It is a class 1 civil infraction as defined in RCW
31 7.80.120 for a person to litter in an amount greater than one
32 cubic foot. Unless suspended or modified by a court, the person
33 shall also pay a litter cleanup fee of twenty-five dollars per
34 cubic foot of litter. The court may, in addition to or in lieu of
35 part or all of the cleanup fee, order the person to pick up and
36 remove litter from the property, with prior permission of the
37 legal owner or, in the case of public property, of the agency
38 managing the property.

39

1 NEW SECTION. **Sec. 20.** The department of ecology, in
2 conjunction with the departments of agriculture and health, shall
3 undertake a study of whether dioxins occur in fertilizers, soil
4 amendments, and soils and if so, at what levels. The department
5 of ecology shall seek additional financial and technical
6 assistance from appropriate federal agencies, the fertilizer
7 industry, and other appropriate sources in conducting this study.
8 The department of ecology shall report its findings to the
9 legislature in November 1998.

10

11 NEW SECTION. **Sec. 21.** A new section is added to chapter
12 15.54 RCW to read as follows:

13 (1) The department shall expand its fertilizer data base to
14 include additional information required for registration under RCW
15 15.54.325 and 15.54.330.

16 (2) Except for confidential information under RCW 15.54.362
17 regarding fertilizer tonnages distributed in the state,
18 information in the fertilizer data base shall be made available to
19 the public upon request.

20 (3) The department, and the department of ecology in
21 consultation with the department of health, shall biennially
22 prepare a report to the legislature presenting information on
23 levels of nonnutritive substances in fertilizers. Results from
24 agency testing of products that were sampled shall also be
25 displayed. The first such report will be provided to the
26 legislature by December 1, 1999.

27 (4) After July 1, 1999, the department shall post on the
28 internet the information contained in applications for fertilizer
29 registration.

30

31 **Sec. 22.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended
32 to read as follows:

33 (1) The hearings board shall only have jurisdiction to hear
34 and decide appeals from the following decisions of the department,
35 the director, (~~the administrator of the office of marine~~
36 ~~safety~~), and the air pollution control boards or authorities as
37 established pursuant to chapter 70.94 RCW, or local health
38 departments:

39 (a) Civil penalties imposed pursuant to RCW 18.104.155,

1 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600,
2 90.48.144, 90.56.310, and 90.56.330.

3 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
4 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020,
5 88.46.070, 90.14.130, and 90.48.120.

6 (c) The issuance, modification, or termination of any permit,
7 certificate, or license by the department or any air authority in
8 the exercise of its jurisdiction, including the issuance or
9 termination of a waste disposal permit, the denial of an
10 application for a waste disposal permit, or the modification of
11 the conditions or the terms of a waste disposal permit.

12 (d) Decisions of local health departments regarding the grant
13 or denial of solid waste permits pursuant to chapter 70.95 RCW.

14 (e) Decisions of local health departments regarding the
15 issuance and enforcement of permits to use or dispose of biosolids
16 under RCW 70.95J.080.

17 (f) Decisions of the department regarding waste-derived
18 fertilizer or micronutrient fertilizer under section 16 of this
19 act, and decisions of the department regarding waste-derived soil
20 amendments under section 18 of this act.

21 (g) Any other decision by the department(~~((, the administrator~~
22 ~~of the office of marine safety,))~~) or an air authority which
23 pursuant to law must be decided as an adjudicative proceeding
24 under chapter 34.05 RCW.

25 (2) The following hearings shall not be conducted by the
26 hearings board:

27 (a) Hearings required by law to be conducted by the shorelines
28 hearings board pursuant to chapter 90.58 RCW.

29 (b) Hearings conducted by the department pursuant to RCW
30 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410,
31 and 90.44.180.

32 (c) Proceedings by the department relating to general
33 adjudications of water rights pursuant to chapter 90.03 or 90.44
34 RCW.

35 (d) Hearings conducted by the department to adopt, modify, or
36 repeal rules.

37 (3) Review of rules and regulations adopted by the hearings
38 board shall be subject to review in accordance with the provisions
39 of the Administrative Procedure Act, chapter 34.05 RCW.

1
2 NEW SECTION. **Sec. 23.** The following acts or parts of acts
3 are each repealed:

- 4 (1) RCW 15.54.335 and 1997 c 427 s 2; and
5 (2) RCW 70.95.830 and 1997 c 427 s 5.

6
7 NEW SECTION. **Sec. 24.** This act may be known and cited as the
8 fertilizer regulation act.

9
10 NEW SECTION. **Sec. 25.** If specific funding for the purposes
11 of this act, referencing this act by bill or chapter number, is
12 not provided by June 30, 1998, in the omnibus appropriations act,
13 this act is null and void.

 Passed the Senate March 9, 1998.

 Passed the House March 4, 1998.

 Approved by the Governor March 18, 1998.

 Filed in Office of Secretary of State March 18, 1998.

1